IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1068 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRA C DALAL

Versus

NEETA SHAH

Appearance:

MR TUSHAR HEMANI FOR MR SN SOPARKAR for Petitioner No. 1

MR AKIL QURESHI FOR MR M.R. BHATT for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1 The petitioner has challenged the legality and validity of notices dated 12/2/1985 under section 148 of the Income Tax Act,1961 by which the assessments made for the years 1980-81 and 1981-82 are sought to be reopened. The Division Bench hearing the matter on 9/2/1994 having regard to the facts and circumstances of the case directed that the petitioner to submit reply to the notices and file returns as stated in the notices before the Appropriate Assessing Officer without prejudice to his rights and contentions raised in the petition. The Division Bench also directed the Assessing Officer to decide the case within a period of one month from the date of filing of the reply and return by the petitioner. Time schedule was fixed by the Division Bench and the Assessing Officer was directed to place on record of this petition the order that may be passed by the Assessing Officer and not to implement the same without permission of the Court. From the facts, it appears that for subsequent years the contention raised by the petitioner was accepted by the Commissioner (Appeals) and the order made by the Assessing Officer was set aside. It appears that in reply it is also pointed out that for the Assessment Year 1982-83, a similar claim for deduction was disallowed by the Income Tax Officer and the assessment was framed on 31/8/1985 under section 143(3) of the Act. Similarly for the Assessment Year 1983-84 also, the assessment had been framed. For both the years the appeals were preferred which were allowed by the Commissioner of Income Tax (Appeals) following the decision of the Delhi Bench of the Appellate Tribunal. In paragraph 8, it is further pointed out by the respondent that the revenue is in appeal before the Tribunal against the said order. The stand taken was that when the assessee has chosen to invoke remedy under the law for the said two assessment years, there is no reason why he should not be relegated for the departmental remedies under the Act for the Assessment Years in question.

2 We are not required to decide the controversy raised in the matter for the years in question, as stated at the bar by learned Advocate for the petitioner that the appeal preferred by the revenue has been dismissed by the Income Tax Appellate Tribunal, and, the decision has not been challenged by the revenue. He further submitted that the case pleaded has been accepted by the revenue and therefore there is no purpose in disposing of the case on merits. He further submitted that the assessment would be time barred as despite the direction given by the Court the assessing officer has not made assessment orders. It is in view of this fact situation of the case

this petition is required to be allowed. The impugned notices are quashed and set aside. Rule made absolute with no order as to costs.

Sd/- Sd/-

(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt